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BEFORE THE ARIZONA CORPORATION

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3 IN THE MATTER OF:)

4 KYLE SCHMIERER, individually) DOCKET NO.
and doing business as AMADIN,) S-20651A-09-0029

5)

6 Respondents.) PROCEDURAL
CONFERENCE

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At: Phoenix, Arizona

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Date: April 30, 2009

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Filed: MAY 13 2009

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Arizona Corporation Commission

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Room 100 of said
4 Commission, 1200 West Washington Street, Phoenix,
5 Arizona, commencing at 11:05 a.m. on the 30th of April,
6 2009.

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BEFORE: MARC E. STERN, Administrative Law Judge

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10 APPEARANCES:

11

For the Arizona Corporation Commission Staff:

12

13 Ms. Wendy Coy
14 Securities Division
15 1300 West Washington Street
16 Phoenix, Arizona 85007

15

For the Respondent:

16

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COLETTE E. ROSS
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1 ALJ STERN: Returning to the record in the --
2 not returning. I guess this -- we are now here in the
3 matter of Mr. Schmierer, Kyle Schmierer and Amadin, or
4 dba Amadin, in Docket No. S-20651A-09-0029.

5 Again, my name is Marc Stern and I will preside
6 over the proceeding today. This essentially is a status
7 conference to see where we are at. I know you all took
8 some time to talk to each other. And this isn't an
9 evidentiary hearing, as we noted in the procedural
10 order.

11 And, Ms. Coy, you are here on behalf of the
12 Division?

13 MS. COY: That is correct.

14 ALJ STERN: And, Mr. Schmierer, you are here on
15 your own behalf?

16 MR. SCHMIERER: Yes, sir.

17 ALJ STERN: Am I pronouncing that right again?

18 MR. SCHMIERER: That's fine, yes.

19 ALJ STERN: Okay. All right. Well, I thought
20 you all would work this out between yourselves the last
21 time I saw you. Apparently you are still up in the air.

22 Ms. Coy, the Division is requesting a hearing,
23 is that correct?

24 MS. COY: That is correct.

25 ALJ STERN: Versus mediation?

1 MS. COY: That is correct.

2 ALJ STERN: Why is that?

3 MS. COY: Pursuant to your last order, we have,
4 I have had a conversation with Mr. Schmierer. My
5 supervisor has had a conversation with Mr. Schmierer.
6 We are at a standstill as to how to resolve this matter.

7 I tried to enlighten Mr. Schmierer as to the
8 basis for our action, which is we believe there was a
9 general solicitation of securities through the internet.
10 He indicates that my -- he has got a different
11 interpretation of the statute. And obviously we have,
12 the Securities Division has one interpretation of the
13 statute, he has a different one. And basically that's
14 up to the Judge to make a decision as to whose
15 interpretation is correct. So, therefore, I don't
16 believe mediation will be successful. I believe we need
17 a hearing to actually hear the facts and apply the law.

18 ALJ STERN: Okay. If I recall, in the notice
19 the only allegations we are talking here are
20 unregistered sales and an unregistered salesperson. Is
21 that pretty much it?

22 MS. COY: That is correct. It is just
23 violations of the 1841 and 1842.

24 ALJ STERN: Okay. And no allegation of a fraud
25 violation in this case?

1 MS. COY: Not at this point.

2 ALJ STERN: Okay. Mr. Schmierer, you wrote --
3 the Division requested a hearing and you requested
4 mediation, right?

5 MR. SCHMIERER: Sir, if I may, I believe the way
6 they characterize the situation was totally false. I
7 would like to be able to state for the record what
8 really happened.

9 ALJ STERN: Okay. You can state, but did you
10 ask -- your plan is for mediation? You are still
11 requesting somebody to sit down and sort this out
12 between the two of you, right?

13 MR. SCHMIERER: Yes, sir.

14 ALJ STERN: Okay. Without getting into
15 personalities, or whatever, apparently, Ms. Coy said you
16 apparently have one viewpoint on what the law is in
17 Section 44-1841. That's an unregistered security note.
18 I think you have looked up some of the statutes.

19 Do you know what a security is at this point a
20 little bit?

21 MR. SCHMIERER: Yes, sir.

22 ALJ STERN: Okay. And I don't want to ask you
23 specific facts about you but there was something -- I
24 think you were, at least it is alleged that something
25 was on Craigslist, is that right? Something or other, I

1 think.

2 MS. COY: Let me clarify. This was not a
3 Craigslist case.

4 ALJ STERN: This isn't?

5 MS. COY: This was just regular web pages,
6 various websites.

7 ALJ STERN: Okay, all right. This is a web
8 page case, okay.

9 So in any event, you are having a differing
10 opinion on what is a security; is that part of your --

11 MR. SCHMIERER: Yes, sir. I feel it is very
12 important I get an opportunity. They got to state what
13 they said happened. But that's not accurate at all.

14 ALJ STERN: Let me, I mean --

15 MR. SCHMIERER: It is very important because it
16 has to deal with how I believe abuse of power and a
17 breach of law --

18 ALJ STERN: I tell you what. I don't get into
19 that area. It is not my -- what I am here for. I am
20 sort of, I sit here and I hear the facts of the case.
21 And then I make a decision if there is a hearing.

22 The other question, but you are talking about
23 you think the case can be sorted out if there would be a
24 mediation, right?

25 MR. SCHMIERER: Yes, sir.

1 ALJ STERN: Somebody independent. I wouldn't be
2 involved, see, because I have got to sit around later on
3 if this thing can't be resolved between the Securities
4 Division and yourself. Okay? Because I know you are
5 saying that essentially the Commission, through the
6 Securities Division, is infringing on your freedom of
7 speech, right?

8 MR. SCHMIERER: Yes. And the situation has
9 become more severe in terms of what they have done
10 recently.

11 ALJ STERN: Well, I don't know. But that's why
12 I am saying I don't want to get involved in that. If
13 there is a hearing, perhaps you can present it then.

14 MR. SCHMIERER: Well, sir, if I may, what
15 happened that led me to file this letter I believe is
16 very pertinent in terms of whether you will understand
17 why the mediation should be granted.

18 ALJ STERN: Which you filed a couple letters, I
19 noticed.

20 MR. SCHMIERER: I apologize for that, but I am
21 not an attorney. And the letter they sent to me was
22 literally one day after they told me I had time to look
23 over their most recent consent order.

24 ALJ STERN: Right.

25 MR. SCHMIERER: And they threw this on me as a

1 dirty trick and surprise. On April Fool's, the next
2 day, I got -- instead of having time to review the
3 consent order, I was faced with this hearing, that they
4 wanted to jump immediately into the hearing, when
5 previously Julie Coleman had given her word, which is a
6 legal binding oral agreement, that I had time to look
7 over the consent order. She did not give that time.

8 I believe the whole -- she lied to me and tried
9 to jump ahead and avoid me. She even said you, sir, had
10 no authority to do mediation, that you are in fact, she
11 said that you were wrong. She said that only her
12 opinion mattered, that only her mattered anything in
13 this issue, which is a violation on the front of
14 democracy, because it is a representatives who creates
15 the laws and their interpretation that matters and not
16 hers. And it is a very, very dangerous and arrogant
17 attitude. And then she turns around to try and bypass
18 your recommendation, says that you are wrong and tried
19 to intimidate me to even believing that I can request a
20 mediation. And the very next day, after she promises me
21 I will have the time to review the consent order line by
22 line, before I even had time to even consider that, they
23 already filed a request for hearing, which bypasses her
24 word which she gave me that I would have a chance to go
25 over the consent order with Ms. Coy. And she

1 bypassed -- she was trying to avoid this going to
2 mediation. She was trying to railroad me because I
3 don't have an attorney.

4 ALJ STERN: Okay.

5 MR. SCHMIERER: This is Ms. Coleman, not
6 Ms. Coy. I wanted to make that clear.

7 ALJ STERN: Let's back you up a little bit.
8 Since all this goes back, this is the end of April now,
9 and I know they requested this hearing, maybe you didn't
10 expect them to --

11 MR. SCHMIERER: Because they promised.

12 ALJ STERN: -- when it was done, et cetera, et
13 cetera. Well, since the time they had the consent order
14 and all this time has elapsed, did you have a chance to
15 look at it?

16 MR. SCHMIERER: Sir, it was only one day I had
17 to look at it.

18 ALJ STERN: No, no. I am saying since whenever
19 you, you know, you and the Division got in this little
20 tiff -- I don't know how you spell tiff -- but since you
21 had the disagreement that you apparently thought you had
22 a certain amount of time to examine this document and
23 they apparently maybe, I don't know if there is a
24 misunderstanding or what, but they filed a request that
25 a hearing be set, you turned around and said this is

1 what happened and I want binding arbitration or
2 mediation or whatever. Well, there isn't any such thing
3 as binding arbitration, I can tell you that. Sometimes
4 other things can happen.

5 But in any event, since they filed their request
6 for hearing and you filed your letter, did you take the
7 time to look at the consent order? I am just asking.

8 MR. SCHMIERER: I have not had the time, sir. I
9 do not -- these people are being paid full time to do
10 this, whereas I am, instead of creating jobs in the
11 State of Arizona, I am being forced to struggle through
12 my various survival and I have not had time. I'm
13 struggling merely to survive and I have not had time
14 since then. And I have had to prepare. Instead of
15 having time to even read the consent order again, after
16 she promised me I would have time to do that, they
17 immediately, same day, filed for the hearing, which is
18 a -- she violated her word.

19 ALJ STERN: Well, aside from --

20 MR. SCHMIERER: And I haven't had time, sir.
21 That's why then I have had to deal with this, having to
22 write up this letter trying to figure out what even a
23 motion is. That's why I had to do it twice.

24 ALJ STERN: All I am saying to you,
25 Mr. Schmierer, okay, is --

1 MR. SCHMIERER: I did not have time, sir.

2 ALJ STERN: Since the month since you filed your
3 letter, you haven't taken 10 minutes or 20 minutes or
4 half a day --

5 MR. SCHMIERER: I wish I had that much time
6 extra in my life, sir. I have not. I only had time to
7 prepare for this case and keep my head above water from
8 being homeless.

9 ALJ STERN: Okay. I think you said you weren't
10 working at the time we had the last hearing.

11 MR. SCHMIERER: I have a temporary position
12 right now, scoring at the Pearson Center at Mesa.

13 ALJ STERN: At the what?

14 MR. SCHMIERER: I'm missing work, paid work
15 right now. This is very detrimental to me. But, yes,
16 sir, I have a temporary -- it is a contract, short-term
17 job that I need so I can pay rent and eat, which --

18 ALJ STERN: The Pearson Center, what is that?

19 MR. SCHMIERER: It is a multinational
20 corporation. They are doing, among other things, I am
21 working scoring student test papers.

22 ALJ STERN: Oh I, see.

23 MR. SCHMIERER: Grading essays.

24 ALJ STERN: Here is the thing. All right? I
25 have the Division requesting a hearing because

1 apparently you disagree about the meaning of the law.
2 You tell me you haven't read through an option that they
3 gave you and you say that they turn around and requested
4 a hearing before you could read the consent order,
5 right?

6 MR. SCHMIERER: Yes, sir.

7 ALJ STERN: Okay. And you need some more time
8 to read it?

9 MR. SCHMIERER: After they sent this, I have had
10 to focus all my time on this. So I don't know how that
11 would --

12 ALJ STERN: Well, I mean --

13 MR. SCHMIERER: They said that by filing for the
14 hearing, my understanding again --

15 ALJ STERN: I mean since April 2nd, that was --
16 well, I have one thing -- yes, everything you filed was
17 around April 2nd. So all I am asking is: Since, in
18 that 28 days between then and now, did you ever look at
19 the other paper work that they gave you?

20 MR. SCHMIERER: I have not had the time to do
21 that, preparing for this meeting and trying to survive,
22 as I said. And they left me with the impression with
23 that very immoral bypass and breaking their word that
24 they weren't even willing to consider that.

25 So unless, if I can get the mediation, hopefully

1 with enough time advanced in the future that I can have
2 time to read the consent order before I meet with the
3 other judge whoever that might be...

4 ALJ STERN: All right. Well, I don't know what
5 we are going to do with this. I haven't figured it out.

6 MS. COY: Mr. Stern, may I have a moment?

7 ALJ STERN: Yes.

8 MS. COY: Ms. Coleman copied me on an e-mail
9 that she sent to Mr. Schmierer indicating that we were
10 going to go forward and request a hearing, but he,
11 Mr. Schmierer, needed to review the consent order and
12 get back to us. And we can, even if a hearing date is
13 set, we can still discuss the consent. And that option
14 is still open. We just would like a date certain that,
15 if talks fall and the consent is rejected, we can then,
16 for a time frame, go forward with the hearing.

17 So at this point in time we do request a
18 hearing. However, Mr. Schmierer can contact us at any
19 time with respect to the consent and we can discuss
20 those issues. And, you know, at some point the consent
21 will be withdrawn.

22 ALJ STERN: Right.

23 MS. COY: But at any point, we can sit down and
24 talk to him about the consent.

25 And I apologize for whatever misunderstanding,

1 but we are trying to keep the case and the calendar
2 moving on this case. And we have offered a consent. We
3 are waiting for the response on that. And obviously it
4 has been --

5 ALJ STERN: Right.

6 MS. COY: -- a long time. So we would like to
7 move this case forward by having a hearing date set so
8 we know for sure when to say, okay, this is the time
9 frame on the consent. And then we can focus in on that
10 hearing. But he has had plenty of time to review the
11 consent and discuss it with us even though we don't have
12 a hearing date yet.

13 ALJ STERN: Right.

14 MR. SCHMIERER: I never received that e-mail,
15 sir. That's not true. She never sent an e-mail of that
16 regard whatsoever.

17 ALJ STERN: Whatever.

18 MR. SCHMIERER: That's false, a lie.

19 ALJ STERN: Mr. Schmierer, just a minute.

20 Mr. Schmierer, if you are going to have an arbitration
21 or a hearing or anything, you are your sole witness? Do
22 you have any other witnesses or anything?

23 MR. SCHMIERER: I am not --

24 ALJ STERN: Anybody else that would be involved
25 on your behalf?

1 MR. SCHMIERER: I have some representatives who
2 are willing to help me. I will say representatives.

3 ALJ STERN: State, you mean state
4 representatives? You mean down at the legislature?

5 MR. SCHMIERER: Yes, sir.

6 ALJ STERN: Oh, okay.

7 MR. SCHMIERER: And I have --

8 ALJ STERN: Well --

9 MR. SCHMIERER: -- people who are advising me
10 who know more about the law than I do. But
11 unfortunately I cannot afford an attorney.

12 ALJ STERN: Okay, okay. Here is -- and the
13 Division, let me see what the Division's position is.

14 How many possible witnesses might you have
15 involved in any proceeding that we have?

16 MS. COY: At this point, just one.

17 ALJ STERN: Okay. Just one. Just an
18 investigator?

19 MS. COY: That's correct.

20 ALJ STERN: All right. And you are not alleging
21 any sales or anything?

22 MS. COY: No. To our knowledge no sales have
23 taken place.

24 ALJ STERN: Okay. And as far as exhibits,
25 whatever I guess you garnered off the internet type

1 situation?

2 MS. COY: Approximately probably between 10 and
3 20.

4 ALJ STERN: All right. In scheduling this, you
5 are lining up behind some other ones. We have some
6 other matters going forward in July. It doesn't sound
7 like it would be terribly long. However, I was looking
8 in another proceeding to schedule it just before this
9 one, and if it isn't resolved. And the last week in
10 July happens to be a Commission open meeting for a
11 utilities matter. So that hurts a couple of our days in
12 there.

13 So I am either thinking, and, Mr. Schmierer, you
14 are going to have some time in the interim, whatever we
15 go forward with, to take a look at the document that you
16 haven't looked at because you have had too many things
17 on your plate. And maybe, just maybe you might find
18 that you can agree with it. I don't know. Maybe you
19 won't agree with it. But maybe you can work something
20 out where both sides will agree in the interim, and in
21 which case Ms. Coy will know how to get the matter
22 suspended and take care of whatever has to be done.

23 So, and I assume you know how to contact the
24 Division, right, sir?

25 MR. SCHMIERER: Filing a letter through the

1 Docket Control system, I guess.

2 ALJ STERN: Well, or you can, you -- I don't
3 know whether you all are in telephone contact.

4 MS. COY: I am providing a card right now so he
5 has got my direct line.

6 MR. SCHMIERER: I am a little leery of doing
7 that because they have lied about several things.

8 ALJ STERN: Well, she is giving you the card,
9 sir.

10 MR. SCHMIERER: I have that card.

11 ALJ STERN: Well, so, if you need to get ahold
12 of her and say all right, we can resolve this, I just
13 read this document, it is in line, I am just saying, I
14 am not expecting you will, but perhaps you might resolve
15 it.

16 All right. What I am going to do, I am going to
17 take this matter under advisement. It will be scheduled
18 accordingly. I haven't made up my mind one way or
19 another where we are going to go with it and exactly
20 when but I will put out a procedural order.

21 Mr. Schmierer, are you still at North 27th
22 Street?

23 MR. SCHMIERER: Yes, sir.

24 ALJ STERN: 15651 North 27th Street, Suite 218?

25 MR. SCHMIERER: Yes, sir.

1 ALJ STERN: Is that an office or is that an
2 apartment?

3 MR. SCHMIERER: It is a home office, apartment.

4 ALJ STERN: Home office, okay. And it is 85032?

5 MR. SCHMIERER: Yes, sir.

6 ALJ STERN: I just want to make sure I have the
7 right address for you. And if you move, be sure and
8 advise us here, because, you know, we will be scheduling
9 things.

10 The Division, I know where you are at.

11 So I will put out a procedural order and I will
12 advise you all when we are next scheduled to get back
13 together.

14 And is there anything else?

15 MS. COY: Yes, Your Honor. If you make a
16 decision to schedule any type of mediation, we ask that
17 at the same time a hearing be set to make sure that, if
18 the mediation does not go forward, that we have got a
19 definite date for the hearing to get this matter
20 resolved.

21 ALJ STERN: Sure. That's agreeable.

22 Okay. With that, we will be in recess. I will
23 put out a procedural order advising the parties of the
24 date for the next meeting, whether it is a mediation
25 session with an independent judge or whether it is a

1 hearing on the issues of whether there has been a
2 violation of the Securities Act and with unregistered
3 sale -- unregistered offer by unregistered salesman, I
4 guess.

5 Okay. With that, we are in recess. Thank you.


6 MS. COY: Thank you.

7 (The proceedings concluded at 11:25 a.m.)
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1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
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7 I, COLETTE E. ROSS, Certified Reporter No.
8 50658 for the State of Arizona, do hereby certify that
9 the foregoing printed pages constitute a full, true and
10 accurate transcript of the proceedings had in the
11 foregoing matter, all done to the best of my skill and
12 ability.

13
14 WITNESS my hand this 9th day of May, 2009.
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18 
19 _____
20 COLETTE E. ROSS
21 Certified Reporter
22 Certificate No. 50658
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